

# Calendar No. 885

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-881

## COMDR. EDWIN J. SABEC, U.S. NAVY

MAY 19, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 5419]

The Committee on the Judiciary, to which was referred the bill (H.R. 5419) for the relief of Comdr. Edwin J. Sabec, U.S. Navy, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve Comdr. Edwin J. Sabec, U.S. Navy, of liability to the United States in the amount of \$4,129.03 representing overpayments of basic pay he received in the period from June 6, 1952, through June 30, 1967, as the result of administrative error in the computation of service for use in establishing his pay entry base date.

#### STATEMENT

The Department of the Navy in its report to the House Committee on the Judiciary advises that it has no objection to favorable consideration of this legislation. The Comptroller General of the United States stated that whether relief should be granted in this particular case is a matter for determination by the Congress.

The indebtedness with which this bill is concerned resulted from an administrative error in the computation of service to be used in establishing Commander Sabec's pay entry base date. A review of his records by the Department of the Navy indicated that on December 15, 1952, his pay entry base date was established as April 3, 1948. This pay base date erroneously credited a period of enlisted service in the U.S. Marine Corps Reserve from July 30, 1948, to July 25, 1950,

while he was serving as a midshipman at the U.S. Naval Academy. He served as a midshipman from July 30, 1948, to June 5, 1952.

The Navy Department advises that the overpayment was the result of an administrative error in granting credit for enlisted service in the U.S. Marine Corps Reserve. He enlisted in the Reserve on July 26, 1948, and was at the Academy until July 25, 1950. After he was commissioned in the U.S. Navy on June 6, 1952, he applied for a revised pay entry base date which would give him credit for his enlisted service prior to entering the Academy. As a result of this request, the pay entry base date was established as April 3, 1948, which included the period that Commander Sabec had dual status as an enlisted Marine reservist and as a midshipman in the Naval Academy. Commander Sabec made an informal request for a verification at that time and he was advised that the pay entry date was correct.

Nothing more occurred in connection with the matter until August of 1967 when Commander Sabec received correspondence from the Bureau of Naval Personnel which stated that his pay entry base date had been changed to March 29, 1950.

No part of the period while Commander Sabec was a midshipman at the Naval Academy is creditable service for pay purposes and it is indicated that the amount of \$4,129.03 represents the overpayment of basic pay which resulted from crediting him with part of such midshipman service.

The Navy Department advises that there is no evidence of lack of good faith and that the error occurred solely as the result of erroneous administrative action by Government personnel, and the Navy Department favors favorable consideration of this legislation.

The committee is in agreement with the Department of the Navy that this bill receive favorable consideration and accordingly the committee recommends favorable consideration of H.R. 5419, without amendment.

Attached hereto and made a part hereof are the reports submitted by the Navy Department and the Comptroller General to the House Judiciary Committee.

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, D.C., June 12, 1968.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of February 7, 1968, to the Secretary of the Navy requesting comment on H.R. 15063, a bill to provide relief for Comdr. Edwin J. Sabec, U.S. Navy.

This bill would relieve Comdr. Edwin J. Sabec, U.S. Navy, of liability to repay the United States the sum of \$4,129.03, representing the overpayments of basic pay received by him for the period from June 6, 1952, through June 30, 1967, as a result of administrative error.

The records of this Department show that Commander Sabec's indebtedness resulted from an administrative error in the computation of service for use in establishing his pay entry base date. A review of his records indicate that on December 15, 1952, his pay entry base date was established as April 3, 1948. This pay base date erroneously credited a period of enlisted service in the U.S. Marine Corp Reserve from

July 30, 1948, to July 25, 1950, while Commander Sabec was serving as a midshipman. Records show that he served as a midshipman, U.S. Naval Academy, from July 30, 1948, to June 5, 1952. On August 18, 1967, Commander Sabec's pay entry base date was reestablished as March 29, 1950, to exclude the aforementioned period of noncreditable enlisted Marine Corps Reserve service.

The above corrected pay entry base date is computed on the basis of the following service:

Component	From—	To—
U.S. Navy (enlisted).....	May 23, 1946	June 3, 1948
U.S. Naval Reserve (enlisted).....	June 4, 1948	July 29, 1948
U.S. Navy (officer).....	June 6, 1952	Present.

There is no evidence of lack of good faith on the part of Commander Sabec. The overpayment was the result of an administrative error. The amount of the indebtedness as stated in the bill has been verified.

Accordingly, the Department of the Navy has no objection to the enactment of subject bill.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

For the Secretary of the Navy.

Sincerely,

R. WRZESINSKI,  
*Captain, U.S. Navy,*  
*Director, Legislative Division.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., March 13, 1968.*

B-163510.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter dated February 7, 1968, requesting our views on H.R. 15063, a bill for the relief of Comdr. Edwin J. Sabec.

The bill would relieve Commander Sabec of all liability to repay to the United States the sum of \$4,129.03, representing the amount of overpayments of basic pay received by him for the period from June 6, 1952, through June 30, 1967, as a result of administrative error. Also, the bill would allow full credit in the audit and settlement of the accounts of any certifying or disbursing officer of the United States for the amount for which liability is relieved.

Section 2 of the bill would authorize and direct the Secretary of the Treasury to repay to Commander Sabec, out of any money in the Treasury not otherwise appropriated, the sum of any amounts received or withheld from him on account of the overpayment referred to in the first section of the bill.

On August 18, 1967, Commander Sabec's pay entry base date was established as March 29, 1950. His pay entry base date prior thereto was April 3, 1948. The corrected pay date was computed on his service as an enlisted man from May 23, 1946, to July 29, 1948, and as a commissioned officer from June 6, 1952, to date. Examination of his pay records shows that during the period from July 30, 1948, through June 5, 1952, Commander Sabec was a midshipman at the U.S. Naval Academy.

A member's pay entry base date is the initial date of continuous service or that date adjusted to show lost time and breaks in service. This date is used to determine when a member is entitled to longevity increases in basic pay.

In computing the corrected pay entry base date midshipman service was excluded pursuant to 10 U.S.C. 6116, now subsection (b) of 10 U.S.C. 971, as added by section 6(a) of the act of January 2, 1968, Public Law 90-235, 81 Stat. 761, which provides in pertinent part that:

In computing length of service for any purpose: (1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the U.S. Naval Academy or as a cadet at the U.S. Military Academy, U.S. Air Force Academy, or U.S. Coast Guard Academy, if he was appointed as a midshipman or cadet after March 4, 1913; \* \* \*

No part of the period while Commander Sabec was a midshipman at the Naval Academy is creditable service for pay purposes and it is indicated that the amount of \$4,129.03 represents the overpayment of basic pay which resulted from crediting him with part of such midshipman service. His current active duty pay record was corrected as of July 1, 1967, and he apparently has been paid at the correct rate on and after that date.

As indicated above, the overpayments in this case resulted because the officer was given credit for service which the law specifically prohibits. Generally officers who had midshipman service have been denied credit for such service as the law requires and, therefore, the bill, if enacted, would give Commander Sabec more pay than most other officers similarly situated.

We do not view with favor legislation which grants preferential treatment to an individual over others in a similar situation. On the record before us, we find no special equity in Commander Sabec's case which would justify our recommending favorable consideration of the bill. The question of whether relief should be granted in this case is, of course, for determination by the Congress on the basis of the facts and circumstances presented.

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General  
of the United States.*

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